



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened to deal with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenant; and
- recovery of the filing fee.

The landlord, the tenant, and the tenant's witness/father attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The tenant confirmed receiving the landlord's evidence and that she did not provide documentary and digital evidence prior to the hearing.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and/or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant for alleged damage to the rental unit and to recover the cost of the filing fee?

Background and Evidence

The undisputed evidence is that this tenancy began on September 1, 2014, with a monthly rent of \$2,950 and a security deposit of \$1,475 being paid by the tenant to the landlord at the time. The rental unit is on the main floor of the residential property. There are separate rental units in the lower floor.

The evidence shows that the landlord here took ownership of the residential property on or about October 20, 2016. The tenant's current monthly rent is \$3,279.49.

The landlord's monetary claim is \$891.45, which is the total of three plumbers' bills.

To support his application, the landlord submitted that on August 22, 2020, the tenant advised him of plumbing issues in the rental unit, that the taps and drains were draining slowly since the renovation on the downstairs suites.

On August 25, 2020, the landlord submitted that the tenant requested support for the plugged toilet on the main level. The landlord submitted that he hired a plumber, HK, who, on August 31, 2020, removed two toilets, snaked the drains and replaced two wax rings. The plumber indicated the toilet functioned as normal. That invoice for the visit was \$441.00.

According to the landlord, on September 1, 2020, the tenant sent a text message and informed him the toilet still did not work. That day, another plumber, LP, attended the rental unit, snaked the toilet and removed a tampon. According to the landlord, the invoice indicated the toilet was then operating normally. The invoice for the plumber's visit was in the amount of \$156.45.

The landlord submitted that on September 3, 2020, the tenant informed him her nanny admitted putting the tampon in the toilet, but that the toilet was still not flushing properly. The landlord submitted he followed up with LP, who failed to contact the tenant again.

The landlord submitted that he then contacted a third plumber, who attended the rental unit on September 9, 2020. This plumber, AM, found the toilet was backing up, the toilet was removed and inspected and a pencil was found inside the toilet, causing the problem. AM installed the toilet with a new wax seal. AM's invoice was in the amount of \$294.00.

The landlord submitted that the tenant is responsible for the plumber's costs, because the tenant or someone she has allowed in the rental unit caused the plumbing issues, the tampon and pencil.

The landlord said he sent the tenant the plumbers' invoices for repayment, but she has refused to pay.

The landlord's relevant evidence included a video clip of the downstairs toilet being plunged, the three plumbers' invoices, photographs, and correspondence between the parties.

Tenant's response –

The tenant submitted that the home is 100 years old and therefore has old plumbing. The tenant said that plumbing has always been slow and denied her child put the pencil in the toilet.

The tenant said that there has never been any, or at least, very little routine maintenance on the plumbing and it was undetermined how long the pencil may have been inside the toilet.

The tenant submitted that the other suites in the house have undergone recent renovations and her pipes have never been snaked.

The tenant submitted that the landlord never asked her if she would pay for the plumbing costs prior to hiring them and considered it unfair that she should have to pay for three plumbers.

Tenant's witness –

The tenant's witness, CR, said that he has been in the rental unit off and on for three years, and the pipes and drains have always been slow. CR pointed out that two different plumbers worked on the plumbing and found no problems.

CR said the slow drains and pipes were still ongoing and the matter has not been resolved.

CR said the tampon was not the cause of the stoppage, as the picture shows nothing around or clinging to the item.

CR said it was indeterminate as to how long the pencil might have been in the toilet, due to the age of the plumbing and lack of maintenance.

Analysis

After reviewing the relevant oral, documentary and digital evidence, I provide the following findings, based upon a balance of probabilities:

In a claim for damage or loss under the Residential Tenancy Act, Residential Tenancy Branch Regulations or tenancy agreement, the claiming party, the landlord in this case, has to prove their claim with a balance of probabilities, or it is more likely than not. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the obligation to prove their claim and the claim fails.

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. It is up to the claimant to verify the value of the loss or damage.

Under section 32 of the Act, a landlord must provide and maintain the residential property in a state of decoration and repair that:

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

A tenant must maintain reasonable, health, cleanliness and sanitary standards in the rental unit. Damage to a landlord's property or other losses are not the responsibility of the tenant unless the tenant has been negligent in the duty owed to the landlord or have breached the Act.

In this case, the tenant had the exclusive use and possession of the rental unit for six years when the pencil was discovered in the toilet. The tenant's arguments that the pencil could have been in the toilet for a long time, and was not discovered earlier due to the lack of maintenance and adequate plumbing, I find is not reasonable and does

not make sense to me. Despite the slow drains, there had apparently never been a blocked toilet before, at least not that was discussed.

Apart from that, I relied upon the statements of a professional plumber, AM, who removed the toilet, found the pencil inside the toilet, and said that the pencil caused the problem.

Additionally, when reviewing the video of the toilet being plunged, by the tenant's father, I heard the voices in the background of what appeared to be several, active children playing about. I find it just as likely as not that a child put the pencil in the toilet.

I therefore find the tenant is responsible for any issue connected with the pencil being in the toilet, and in this case, the amount listed on AM's invoice. As a result, I find the landlord has established a monetary claim of **\$294.00**.

While the drains may have been slow draining, I do not find that to be out of the ordinary considering the age and character of the 100 year old building.

As to the claim for other plumbers' costs, I do not find it reasonable that the tenant should be responsible for two other plumbers, who attended, but did not resolve the problem. I find their work, in light of the pencil not being found, was more in the way of routine maintenance, for which the tenant is not responsible.

Although one of those plumbers indicated they removed a tampon, there was no assertion that the tampon caused the problem. My review of the evidence does indicate that the tampon appeared to have caused the blockage.

I therefore find the landlord is **not entitled** to be reimbursed for HK's and LP's plumbing invoices.

For the above reasons, I **grant** the portion of the landlord's application for reimbursement of the costs of AM, in the invoice amount of **\$294.00**.

I **dismiss** the portion of the landlord's application for reimbursement of the costs of HK, in the invoice amount of \$441.00 and for the costs of LP, in the invoice amount of \$156.45.

As the landlord's application had merit, I grant him recovery of the filing fee of \$100.00.

Conclusion

The landlord has established a total monetary claim of \$394.00, comprised of the allowed plumbing costs of \$294.00 and the filing fee of \$100.00.

I grant the landlord a monetary order in the amount of \$394.00.

In the event the tenant does not voluntarily comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant is cautioned that costs of enforcement are recoverable from the tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 5, 2021

Residential Tenancy Branch